

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CODY PERRY	§	
Plaintiff,	§	
	§	
v.	§	Cause No. 1:18-cv-00767-LY
	§	
CITY OF LLANO,	§	
MATTHEW GRANT HARDEN,	§	
MELISSA SLOAN and KEVIN RATLIFF	§	
Defendants.	§	

AGREED MOTION FOR STAY

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendants KEVIN RATLIFF and the CITY OF LLANO, joined by Plaintiff CODY PERRY, and Defendants MATTHEW GRANT HARDEN AND MELISSA SLOAN (the “Parties”) and file this their Agreed Motion for Stay pending the Court’s ruling on the *Report and Recommendation of the United States Magistrate Judge* [Dkt. 47] and respectfully show the Court as follows.

**I.
BACKGROUND SUMMARY**

1. On January 23, 2019, Defendant Ratliff filed his Rule 12b Motion to Dismiss [Dkt. 35]. On January 25, 2019, Defendant City filed its Rule 12(b)(6) Motion to Dismiss [Dkt. 36]. Defendants Melissa Sloan (hereinafter referred to as “Defendant Sloan”) and Matthew Grant Harden (hereinafter referred to as “Defendant Harden”) did not file motions to dismiss.¹

¹ Defendant Harden filed his *First Amended Answer* on January 28, 2019 [Dkt. 37]. Defendant Sloan filed her *Original Answer to Plaintiff’s Second Amended Complaint* on February 11, 2019 [Dkt. 41].

2. On January 23, 2019, in a Docket Text, the Clerk informed the parties were to submit a proposed Scheduling Order by February 8, 2019.

3. On January 31, 2019, the parties submitted their proposed *Scheduling Order* [Dkt. 38]. In the *Order*, in paragraph no. 1, the parties proposed that the first deadline would be June 7, 2019 for filing all amended or supplemental pleadings and to join additional parties.

4. On February 6, 2019, Plaintiff filed his *Response to Defendants Kevin Ratliff's and the city of Llano's Motion to Dismiss Pursuant to Rule 12(b)(6)* [Dkt. 40]. On February 11, 2019, Defendant Ratliff filed his *Reply to Plaintiff's Response to Motions to Dismiss Pursuant to Rule 12(b)(6)* [Dkt. 42]. On February 12, 2019, Defendant City filed its *Reply in Support of Its Motion to Dismiss Plaintiff's Second Amended Complaint Pursuant to Rule 12(b)(6)* [Dkt. 44].

5. On February 15, 2019, the Hon. Judge Yeakel, issued an *Order* [Dkt. 45], referring the motions to dismiss, responses and replies to U.S. Magistrate Mark Lane for a Report and Recommendation.

6. On March 5, 2019, this court issued an *Order Setting Initial Pretrial Conference* [Dkt. 46], with a setting of **June 12, 2019 at 3:00 p.m.** In addition, the court “tentatively approved” and ordered the parties to comply with the dates set forth in paragraphs 1 through 7 of their submitted proposed scheduling order. The Scheduling Order contains a deadline for the parties to file all amended or supplemental pleadings and to join additional parties by **June 7, 2019**. Written offers of settlement are due on or before **June 7, 2019** and responses are due by **July 5, 2019**. **These specific deadlines are the subject of this Motion.**

7. On April 29, 2019, the *Report and Recommendation of the United States Magistrate Judge* [Dkt. 47] was issued by United States Magistrate Mark Lane. Magistrate Lane recommended to the Court that Defendant Ratliff's Rule 12(b) Motion to Dismiss [Dkt. 35] be granted and the claim against him be dismissed with prejudice. He further recommended that Defendant City's

Rule 12(b)(6) Motion to Dismiss [Dkt. 36] also be granted and the claim against the Defendant City be dismissed with prejudice.

8. Plaintiff timely filed his *Objections to Report and Recommendation of United States Magistrate Judge* [Dkt. 48] on May 13, 2019. Defendant Ratliff filed his *Response to Plaintiff's Objections to Report and Recommendation of United States Magistrate* [Dkt. 50] on May 14, 2019 and Defendant City filed its *Response to Plaintiff's Objections to Objections to Report and Recommendation of United States Magistrate* [Dkt. 51] on May 16, 2019. The Report and Recommendation are now ripe for the Court's consideration.

9. The Parties have conferred, and all are in agreement with this Motion.

10. The Parties jointly request that the Court issue an order to stay this matter and all pending deadlines until the Court either adopts or rejects the *Report and Recommendation of United States Magistrate Judge* [Dkt. 48]. The Parties specifically do not request a resetting of the Initial Pretrial Status Conference.

II. ARGUMENT AND AUTHORITY

11. The Federal Rules of Civil Procedure have no specific provisions about the availability of discovery during the pendency of a motion to dismiss. However, the Local Rules of this Court provide that:

(b) The same types of cases that are exempt from mandatory disclosure requirements under Federal Rule of Civil Procedure 26 are exempt from the scheduling order requirement of Rule 16. In addition, the following categories of cases are also exempt from the scheduling order requirement: . . . (6) **any other case where the judge finds that the ends of justice would not be served by using the scheduling order procedure of Rule 16.**

Local Rule CV-16(b) Western District of Texas (emphasis added).

12. The Parties agree that the ends of justice will not be served by requiring Defendants who may or may not be dismissed from this matter to comply with the upcoming events on the

Scheduling Order. Meaningful offers of settlement cannot be made or properly considered prior to a determination by this Court concerning whether the City and Chief Ratliff should remain in the suit.

13. The Parties therefore respectfully request that this Court stay this matter and all pending deadlines until the Court rules on the *Report and Recommendation of United States Magistrate Judge* [Dkt. 48].

**III.
EFFORT TO CONFER**

14. The Parties conferred on June 4, 2019 and all are in agreement.

**IV.
CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendants KEVIN RATLIFF and CITY OF LLANO respectfully request that the Court issue an Order staying this matter and all deadlines pending the Court's ruling on the *Report and Recommendation of United States Magistrate Judge* [Dkt. 48], and request such other and further relief to which they may show themselves to be justly entitled, at law and in equity.

Signed on this the 5th day of June 2019.

Respectfully submitted,

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